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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
09/827,775	04/06/2001	Gary Seim	1275.6US01	7347	
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ALTERA LAW GROUP, LLC 6500 City West Parkway, Suite 100			BOCKELMAN, MARK		
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			DATE MAILED: 10/03/2003	6	

Please find below and/or attached an Office communication concerning this application or proceeding.

Application No.		· ·	_		8				
Examiner Mark W Bockelman 3762			Application No.	Applicant(s)					
Mark W Bockelman 3762			09/827,775	SEIM ET AL.					
- The MAILING DATE of this communication appears on the cover sheet with the correspondence address — Period for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ② MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. Estamicina for time my be a validate under the provisions of 3 CPR 1.13(q). In no event, however, may a reply be timely filed that is 40 (b) MONTHS from the melting date of this communication. I set the period of th	,	Office Action Summary	Examiner	Art Unit					
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. Extensions of lone may be available under the provisions of 37 CFR 1.136(a), in an event, however, may a reply be timely filed Extension of lone may be available under the provisions of 37 CFR 1.136(a), in an event, however, may a reply be timely filed Extensions of lone may be available under the provisions of 37 CFR 1.136(a), in an event, however, may a reply be timely filed Extension of lone may be available under the provisions of 37 CFR 1.136(a), in an event, however, may a reply be timely filed Extension of lone in the provision of 18 CFR 1.136(a), in an event, however, may a reply be timely filed If the period for reply selected above, the maximum statutory principle will apply and will expire SSX (b) MONTES from the mainling date of this communication, available, may reduce any examely placed to the selected by the Office into the three mainling date of this communication, available, may reduce any examely placed to the selected term adjustment. See 37 CFR 1.704(b). Status 1) Responsive to communication(s) filed on			Mark W Bockelman	3762					
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. Extansions of time may be available under the provision of 3 CPR 1.35(d). In an event, however, may a reply be timely field If the period for reply specified show is lites than hirty (30) days, a reply whitin the sublation print of the period for reply specified show is little shan hirty (30) days, a reply whitin the sublation print of the part of the reply whitin the sublation print of the part of the reply whitin the sublation print of the part of the print of the period of the print of the part of the part of the part of the period of the ceremental plant term adjustment. Sea 37 CPR 1.76(d). Status 1) Responsive to communication(s) filled on			ears on the cover sheet with the c	orrespondence ac	ldress				
- Extensions of time may be available under the provisions of 37 CFR 1.15(d). In a event, however, may a reply be timely field after StV. (g) MONTHS from the making date of this communication. We provided the provisions of the	A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM								
1) Responsive to communication(s) filed on 2a) This action is FINAL. 2b) This action is non-final. 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213. Disposition of Claims 4) Claim(s) is/are pending in the application. 4a) Of the above claim(s) is/are withdrawn from consideration. 5) Claim(s) is/are allowed. 6) Claim(s) is/are objected to. 8) Claim(s) are subject to restriction and/or election requirement. Application Papers 9) The specification is objected to by the Examiner. 10) The drawing(s) filed on is/are: a) accepted or b∫ objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). 11) The proposed drawing correction filed on is: a) approved b) disapproved by the Examiner. If approved, corrected drawings are required in reply to this Office action. 12 The oath or declaration is objected to by the Examiner. Priority under 35 U.S.C. §§ 119 and 120 13 Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) All b) Some * c) None of: 1. Certified copies of the priority documents have been received. 2. Certified copies of the priority documents have been received in Application No 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). * See the attached detailed Office action for a list of the certified copies not received. 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121. Attachment(e) Notice of References Cited (PTO-892) All Interview Summary (PTO-413) Paper No(s) Notice of Informal Patent Application (PTO-152)	 Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication. If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely. If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication. Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b). 								
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,—	2) Notic	e of Draftsperson's Patent Drawing Review (PTO-948)	5) Notice of Informal						

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DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 8, 10-12, 23-24 and 33 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Olsen 5,205,283. Olsen shows a pacing defibrillation system wherein a sensing unit is coupled to some pacing/sensing electrodes (fig 2) and an algorithm is used to determine whether atrial therapy will be applied. As can be seen from the chart on the front cover, ACL and VCL rates in the units of seconds/beat are determined by averaging a block of stored samples (reference numeral 11). If the ratio is 1:1, a normal beat is determined and no therapy is applied (column 8 lines 65-69) and when the ACL exceeds the VCL a determination of flutter/fibrillation leads to atrial therapy (column 9 lines 24). Thus, when the atrial rate as compared to the ventricle rate fails to exceed the factor 1, atrial therapy is inhibited.

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Claims 2-7, 9, 13-22, 25-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Olsen 5,205,283.

Applicant differs from Olsen in specifying that the rate determination is on a beat per minute unit, which is merely the inverse of Olsen's minute per beat which those of ordinary skill in the art are well apprised to do. In addition, as was known, to have varied the number of samples averaged as well as to provide a room for error (thus instead of 1:1 making it 1.05:1) to allow for some variation in calculation would have been obvious since the device may not be 100% perfect in detecting beats due to threshold variations.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark W Bockelman whose telephone number is (703)-308-2112. The examiner can normally be reached on Monday - Friday 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (703) 308-5181. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)-308-0858.

MWB

MARK EDOKELMAN DUMARA EXAMBIR

September 30, 2003